

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RONALD CARTER,

X

Plaintiff,

-against-

CORRECT CARE SOLUTIONS, CCS, et al.,

Defendant.

X

ORDER ADOPTING REPORT
AND RECOMMENDATION

15-cv-4705 (NSR) (LMS)

NELSON S. ROMÁN, United States District Judge:

Plaintiff, Ronald Carter (“Plaintiff” or Carter”), commenced the instant action *pro se* asserting claims, *inter alia*, pursuant to 42 U.S.C. § 1983 for alleged Fourteenth Amendment violations. (ECF No. 1). Now pending before the Court is a Report and Recommendation (“R&R”) issued by Magistrate Judge Lisa M. Smith (“MJ Smith”), pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), recommending that the complaint be dismissed for failure to prosecute. Plaintiff has filed no objections to the R&R. For the following reasons, the Court adopts the R&R in its entirety, and the complaint is DISMISSED.

BACKGROUND

Plaintiff commenced the action on or about June 16, 2015. On May 2, 2019, a pre-trial conference was held wherein plaintiff appeared. Plaintiff represented to the Court that he had retained counsel. Despite such representation, no notice of appearance was ever filed. The matter was referred to MJ Smith for all pre-trial matters. MJ Smith scheduled multiple conferences and forwarded advance notice of the scheduled conferences to Plaintiff at his last known address. Plaintiff, however, failed to appear at each of the conferences. Due to Plaintiff’s failure to appear in the action and to prosecute his claims, Defendants were granted leave of Court to move to dismiss Plaintiff’s claims. Defendants filed

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their motion on July 8, 2019. (ECF No. 60). MJ Smith issued her R&R on August 1, 2019, recommending the granting of the motion.

STANDARDS OF REVIEW

Review of a Magistrate Judge's Report and Recommendation

A magistrate judge may “hear a pretrial matter [that is] dispositive of a claim or defense” if so designated by a district court. Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). In such a case, the magistrate judge “must enter a recommended disposition, including, if appropriate, proposed findings of fact.” Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1). When a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings or recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b); *accord* Fed. R. Civ. P. 72(b)(2)–(3). However, “[t]o accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); *accord* *Feehan v. Feehan*, No. 09 Civ. 7016 (DAB), 2011 WL 497776, at *1 (S.D.N.Y. Feb. 10, 2011); *see also* Fed. R. Civ. P. 72 advisory committee’s note on 1983 addition (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”)).

DISCUSSION

The R&R was issued on August 1, 2019. A copy of the R&R was forwarded to Plaintiff's last known address on August 5, 2019 and the deadline for filing objections was August 26, 2019.¹

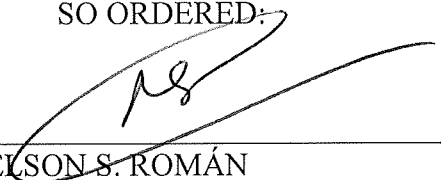
Because Plaintiff has failed to file any objection, the Court reviewed MJ Smith's R&R for clear error and found none. As MJ Smith noted, Plaintiff failed to appear at scheduled conferences, did not inform the Court of a change in address, took no steps to prosecute his claims as against all named and served defendants, and a considerable amount of time has lapsed since Plaintiff appeared in the action. The Court finds no clear error on the face of the R&R.

CONCLUSION

For these reasons, the Court adopts MJ Smith's R&R in its entirety. Defendant's motion to dismiss is granted in accordance with the R&R and the Complaint is deemed dismissed as against all named defendants due to Plaintiff's failure to prosecute. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 60, close the case, to mail a copy of this opinion to Plaintiff at his last known address, and to show proof of service on the docket.

Dated: September 10, 2019
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge

¹ Plaintiff was given additional days within which to file objections to the R&R to account for the mailing of the R&R and his response day falling on the weekend.